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Lead Counsel for Lead Plaintiff New York State Teachers' Retirement System

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE NEW CENTURY

Case No. 2:07-cv-00931-DDP (FMOx)

DISCOVERY MATTER

**DECLARATION OF LEAD
PLAINTIFF NEW YORK STATE
TEACHERS' RETIREMENT SYSTEM
IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO DEFENDANT
KPMG LLP'S MOTION TO COMPEL
THE PRODUCTION OF
DOCUMENTS**

Date: October 14, 2009

Time: 10:00 A.M.

Dept.: F

Judge: Hon. Fernando M. Olguin

Discovery Cut-off: None set

Pretrial Conference: None set
Trial: None set

**DECLARATION OF NYSTRS IN SUPPORT
OF OPP TO DEF KPMG'S MTC**

1 I, Wayne Schneider, hereby state as follows:

2 1. I make this declaration in support of Plaintiffs' Opposition to
 3 Defendant KPMG LLP's Motion to Compel the Production of Documents from
 4 Lead Plaintiff New York State Teachers' Retirement System and Plaintiffs Carl
 5 Larson and Charles Hooten.

6 2. I am General Counsel for Lead Plaintiff New York State Teachers'
 7 Retirement System ("NYSTRS" or the "System") and have served in that capacity
 8 since September 1, 1991. As General Counsel, I am responsible for all legal
 9 matters affecting NYSTRS.

10 3. NYSTRS was established in 1921 by an act of the New York State
 11 Legislature. NYSTRS is the second largest public retirement system in the state of
 12 New York and one of the 10 largest systems in the nation. NYSTRS administers
 13 retirement, disability and death benefits for more than 400,000 current and retired
 14 New York State public school teachers and administrators and their beneficiaries.
 15 NYSTRS is responsible for the collection of employer and employee contributions
 16 to NYSTRS, the investment of those contributions in a broad spectrum of capital
 17 assets, and the timely and accurate payment and administration of the benefits
 18 promised under law to the teachers and administrators which it serves. As of June
 19 30, 2009, NYSTRS had assets of approximately \$72 billion (unaudited). During
 20 the plan year just ended, July 1, 2008 through June 30, 2009, NYSTRS collected
 21 over \$1.2 billion in employer and employee contributions and paid out over \$5
 22 billion in monthly pensions and lump sum benefits.

23 4. NYSTRS was appointed Lead Plaintiff in this action by Order dated
 24 June 26, 2007. Since its appointment, NYSTRS has fulfilled the obligations of
 25 Lead Plaintiff to monitor Lead Counsel and supervise the litigation.

26 5. As Lead Plaintiff, NYSTRS is committed to prosecuting this litigation
 27 and ensuring that the recovery achieved on behalf of the Class is maximized to the
 28 greatest extent possible in light of the risks and circumstances of the case.

1 6. In the course of supervising Lead Counsel and the prosecution of this
 2 litigation, I, along with my staff, have reviewed discovery and have assisted in
 3 responding to discovery, including the requests for production of documents served
 4 by Defendant KPMG LLP (“KPMG”) on NYSTRS.

5 7. At the direction of Lead Counsel, NYSTRS has collected and
 6 produced a substantial quantity of documents for production in response to
 7 KPMG’s discovery requests in this litigation. NYSTRS has produced, among
 8 other things, its business records evidencing transactions in New Century common
 9 stock during the Class Period, its investment policy manuals, its annual reports, its
 10 domestic equity holdings reports, and other similar documents.

11 8. NYSTRS’s purchases of New Century common stock were made
 12 pursuant to indexing approaches. New Century stock was among hundreds of
 13 other stocks purchased together to mimic the performance of a broader index.
 14 NYSTRS’s transactions in New Century securities did not involve NYSTRS’s
 15 Investment Advisory Committee or the NYSTRS’s Real Estate Department, Real
 16 Estate Advisory Committee, or REIT Real Estate Advisors, and were not made
 17 pursuant to the “Leeway Clause” referenced in NYSTRS’s annual financial reports
 18 for the years ended June 30, 2006 and June 30, 2007.

19 9. I understand that KPMG seeks production of all of the minutes and
 20 associated documents for every NYSTRS’s Board of Trustees meeting for at least
 21 the past 5 years. This is clearly a “fishing expedition.”

22 10. NYSTRS’s Board of Trustees is charged under section 504(1) of the
 23 New York Education Law with the “general administration and responsibility for
 24 the proper operation of the [System]”; it is not responsible for the day to day
 25 functioning of the System. Certain members of the NYSTRS’s staff, not the Board
 26 of Trustees, were responsible for the implementation of the various index
 27 approaches and the purchases and sales of the numerous publicly-traded securities,
 28 including New Century common stock, pursuant to those approaches. The Board

1 of Trustees had no involvement in the individual investments made under these
2 approaches. At their meetings, the Board of Trustees did review the overall
3 performance of the various index approaches, but they did not review individual
4 New Century stock positions or purchases or sales. On the other hand, during the
5 time period at issue, the Board of Trustees dealt with numerous items which did
6 not relate or involve the System's investment in New Century common stock. If
7 compelled to comply with this request, NYSTRS will incur significant burden in
8 attempting identify and pull together all the documents which may have been
9 provided to the Board of Trustees during the period at issue, whether from
10 NYSTRS's actuarial, legal, investment, benefits, finance or other areas.

11 11. My legal staff consists of only seven persons, who are responsible for
12 all legal matters affecting the System, including not only investment transactions
13 but, for example, legislation, benefits issues, purchasing questions and human
14 resource issues. Requiring my staff to search for documents responsive to
15 KPMG's overly broad request would require diverting valuable time from all of
16 the important matters requiring attention. Similarly, the NYSTRS investment staff
17 managing the billions of dollars invested by NYSTRS across the broad spectrum of
18 investable capital assets is extremely lean, including only nine persons responsible
19 for external investment managers, corporate governance and private equity, four
20 persons responsible for NYSTRS's internally managed fixed income portfolio, six
21 persons responsible for quantitative strategies and risk management, and eighteen
22 persons responsible for NYSTRS's real estate investments. Requiring them to
23 search for and collect documents in their areas which might be potentially
24 responsive to KPMG's broad request would likewise cause a substantial diversion
25 of time away from important matters requiring attention. Overall, NYSTRS would
26 have to devote hundreds of person-hours to search various files and records for
27 documents, including determining whether documents are retained on site or have
28 been put in off-site storage. Presumably, these documents, once collected would

1 run on for many thousands of pages and would involve countless hours of staff
2 time to organize and copy. For example, so-called “flip books” provided by
3 private equity fund sponsors, outside investment managers and investment
4 consultants would have to be pulled apart to be copied.

5 12. I also understand that KPMG seeks production of documents
6 regarding “NYSTRS’s investment committees, advisors and investment vehicles
7 described in NSYTRS’s annual reports” from January 1, 2005 to the present. If
8 compelled to comply with this request, NYSTRS will incur significant burden and
9 expense. NYSTRS has many thousands of pages of documents potentially
10 responsive to KPMG’s overly broad request though, again, none of these
11 documents are relevant to its investment in New Century stock or this case.

12 13. For example, NYSTRS’s Investment Advisory Committee had no
13 involvement in the investment in New Century stock. The Investment Advisory
14 Committee would hear presentations from NYSTRS’s external investment
15 managers and discuss general investment topics. The Investment Advisory
16 Committee would not have discussed the individual holdings of the various
17 internally managed index funds or how NYSTRS came to purchase or sell stocks
18 of individual companies under these approaches. After April of 2005, NYSTRS
19 had only one external manager and one external fund of funds manager involved in
20 investing in domestic equities. Most of the external investment mangers which
21 made presentations to the Investment Advisory Committee were involved in
22 investing in non-US equities. None of these non-US equity managers invested in
23 New Century stock or would have even done so as New Century was a domestic
24 company and not within the scope of their non-US assignments. The presentations
25 by the NYSTRS’s investment consultant, whether to the Board of Trustees or the
26 Investment Advisory Committee related to the performance of the financial
27 markets generally and the overall performance of the NYSTRS external investment
28

1 managers and did not discuss transactions in individual securities, let alone, New
2 Century stock.

3 14. NYSTRS's New Century stock transactions were, as discussed above,
4 carried out by staff in what was then NYSTRS's Securities Investment Department
5 pursuant to various index approaches. These transactions occurred because New
6 Century was a publicly listed domestic security like the numerous other domestic
7 publicly listed securities available for investment.

8 15. NYSTRS's Real Estate Department which manages the NYSTRS's
9 mortgage and equity real estate investments had no involvement in NYSTRS's
10 domestic equity investments and no involvement in the New Century stock
11 transactions.

12 16. The NYSTRS Real Estate Department has more than \$7 billion in real
13 estate investments, alone. It has always been separate and distinct from the
14 NYSTRS's Securities Investment Department. It has been headed by a chief real
15 estate officer who reports directly to the System's Executive Director. Its mission
16 has always been separate and distinct from the mission of the Securities Investment
17 Department. Its staff is physically located separate and apart from the staff of the
18 Securities Investment Department and its successor departments.

19 17. NYSTRS has a Real Estate Advisory Committee but that Committee
20 is separate and distinct from the Investment Advisory Committee and works
21 exclusively with the NYSTRS Real Estate Department. It is consulted by the staff
22 of the NYSTRS's Real Estate Department regarding transactions being considered
23 by that department. It had no involvement with the Securities Investment
24 Department or successor departments and did not have any involvement with the
25 various indexed strategies discussed above. Thus, it had no involvement in
26 NYSTRS's transactions in New Century stock.

27 18. NYSTRS's external REIT Real Estate Advisors have been assigned to
28 invest a portion of NYSTRS's assets in publicly traded REITs and real estate

1 operating companies. None of them invested in New Century stock. These
 2 managers were engaged by NYSTRS as part of its real estate investment strategies,
 3 specifically to obtain exposure to real estate investments held by publicly traded
 4 REITS. These advisors dealt solely with the staff of the Real Estate Department
 5 and had no involvement in NYSTRS's indexed investment strategies discussed
 6 above under which New Century stock was purchased and sold.

7 19. NYSTRS has invested in numerous private equity partnerships
 8 through the NYSTRS's Securities Investment Department and its successor and
 9 numerous private real estate investment partnerships and funds through the
 10 NYSTRS's Real Estate Department. To my knowledge, none of these involved
 11 investing in New Century stock, a domestic publicly listed company.

12 20. To search for and collect the documents from the various sources
 13 relating to the Investment Advisory Committee, the NYSTRS's Real Estate
 14 Department, the Real Estate Advisory Committee, the numerous private equity and
 15 real estate partnerships and funds in which NYSTRS has invested, and NYSTRS's
 16 investment consultants, NYSTRS would have to devote hundreds of person-hours
 17 to search various filing systems and facilities. Because NYSTRS's investment
 18 staffs are very lean, these searches would require NYSTRS to take staff away from
 19 their important responsibilities to manage NYSTRS's investment portfolios.

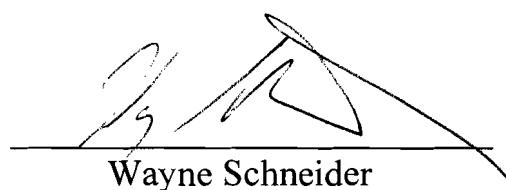
20 21. I understand KPMG continues to insist on documentation relative to
 21 NYSTRS investments under the so-called "Leeway Clause," section 177(9) of the
 22 New York Retirement and Social Security Law. By way of background, New
 23 York is a so-called "legal list state" in that it permits investments by a public
 24 employee retirement system in New York only to the extent they fit within one or
 25 more of the permitted categories of investments. While the current permitted
 26 categories are quite broad and accommodate most investments considered by
 27 NYSTRS, certain investments do not fit within other permitted categories and must
 28 be made pursuant to the authorization under the "Leeway Clause" which is

1 intended to give additional investment authority when a desirable investment may
2 not fit within any other category. Such investments have included investments in
3 foreign equities not otherwise authorized, investments in private equity funds, and
4 certain other investments. The "Leeway Clause" has no bearing whatsoever upon
5 NYSTRS's investment in New Century stock because the investment in New
6 Century, like NYSTRS's investment in hundreds of other domestic publicly listed
7 securities, was made under the authorization of section 177(2) of the New York
8 Retirement and Social Security Law allowing for the investment of up to 70% of
9 NYSTRS's assets in domestic publicly listed securities.

10 22. NYSTRS's overall investment objectives and philosophies can be
11 found in NYSTRS's Comprehensive Annual Financial Reports and Investment
12 Policy Manuals for 2005, 2006 and 2007, all of which have already been produced
13 to KPMG. I understand that KPMG recently requested the production of
14 NYSTRS's Investment Policy Manual for 2008 from Plaintiffs' Lead Counsel,
15 who agreed to produce this document even though it is dated October 2008 – long
16 after the Class Period.

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18 I declare under penalty of perjury under the laws of the United States of
19 America that the foregoing is true and correct. Executed this 18th day of September,
20 2009, in Albany, New York.

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Wayne Schneider